

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**COMPANY PETITION No. 24 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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IDEAL OPTICS LTD. - Petitioner(s)
Versus
SUNSTAR CHEMICALS LTD. - Respondent(s)

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Appearance :

MR ASHOK L SHAH for Petitioner(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 02/11/2006****ORAL JUDGMENT**

Present Company Petition has been filed by the petitioner under Section 433, 434 and 439 of the Companies Act, 1956 for an appropriate order of winding up of the respondent Company,

i.e., Sunstar Chemicals Ltd., contending inter alia that an amount of Rs. 12,86,562 towards principal amount and an amount of Rs. 8,66,159 as interest is due and payable by the respondent, and inspite of repeated requests and demands and notices served upon the respondent Company the respondent company has failed and neglected to pay the dues of the petitioner or any part thereof.

2. It is further submitted that the respondent Company was served upon notices by which the respondent Company was called upon to pay the amount due and payable to the petitioner Company.

3. It is further submitted that though the respondent Company was served with notice, neither there was any reply nor any payment was made. It is submitted that the Company is insolvent and is unable to pay its debts. It has

also been submitted that the Company has not filed its Annual Returns for the last several years with the Registrar of Companies and the Company has stopped its operations. It is further submitted that the Company is even otherwise unable to pay its dues and is insolvent. Under the circumstances it is requested to pass an appropriate order of winding up of the respondent Company.

4. This Court initially directed the Office to issue notices upon the respondent Company, however the same could not be served upon the respondent Company and the company was found "closed" and notice was returned back with an endorsement "Left". This Court therefore passed an order to serve the respondent Company through substituted service by issuing necessary advertisement in 'Indian Express' [English] and 'Jansatta' [Gujarati] both of Ahmedabad Editions. An affidavit dated 12th June 2006 came to be filed

about publication of advertisement in aforesaid two dailies dated 10th May 2006. In spite of the above, nobody appeared on behalf of the respondent Company and hence this Court passed the order admitting the present Company Petition on 30th June 2006. The admission of the Company Petition also came to be published vide advertisement in local newspapers and an affidavit dated 11th September 2006 to that effect also filed submitting that the admission of the Company Petition was published in 'Indian Express' and 'Jansatta' on 27.7.2006 and neither the petitioner company nor its Advocate has received any affidavit in support or opposition of the petition. Nobody appears on behalf of the respondent Company.

5. Heard Shri Ashok L.Shah, learned advocate appearing for the petitioner, and perused the averments made in the Company Petition. An amount of Rs. 12,86,562 towards principal and an

amount of Rs. 8,66,159 as interest are due and payable by the respondent company to the petitioner company. The respondent Company was called upon to make payment by issuing statutory notice which has not been replied by the respondent Company. The amount is not disputed nor any payment is made to the petitioner. In spite of admission of the petition being published in local newspapers, no objection has been received opposing the present Company Petition. Considering the above and the averments in the Company Petition, it is established that the respondent Company is unable to pay its debts to the petitioner as well as other creditors and the respondent Company has lost its financial substratum and has become insolvent. The respondent Company has not paid the dues of the petitioner nor it has settled the matter. It has also not come out with any affidavit that the respondent Company is a profit-making company or is able to discharge its

liabilities and debts.

6. For the reasons stated above, the petition is allowed. The respondent Company is directed to be wound up. The Official Liquidator, attached with this Court, is appointed as 'Official Liquidator' for the respondent Company. The Official Liquidator is hereby directed to take possession of properties [moveable and immovable] of the respondent Company along with its Bank accounts, account books, cash etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of official Valuer for preparation of possession note etc. The petition is accordingly disposed of. No costs.

[M.R. Shah, J.]

RMR.